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No. 93-1179

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1993

SAMIRAT HAFIZ
Petitioner,

vs.

ELECTRONIC DATA SYSTEMS,
Respondent.

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

REPLY OF PETITIONER TO BRIEF IN OPPOSITION

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16 pp

QUESTION PRESENTED FOR REVIEW

Whether the Sixth Circuit Court of Appeals properly granted Defendant's motion for summary judgment in Plaintiff's wrongful discharge case brought under Michigan state law?

Petitioner answers, "No."

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STATEMENT OF JURISDICTION

This petition is brought pursuant to 28 USC 1254(I). There are constitutional and federal questions at stake, as well as rulings made by the lower courts that threaten to disrupt the basic order of things. Petitioner has succeeded in presenting sufficient "special and important reasons" that would warrant the granting of the writ of certiorari.

STATEMENT OF THE CASE

The facts in this case are quite voluminous, and are contained in Petitioner's Petition for Writ of Certiorari. Therefore, in the interest of efficiency and time saving, the facts will not be reproduced in this reply brief.

ARGUMENT

I. THIS SUMMARY JUDGMENT CASE PRESENT ISSUES OF OVERRIDING NATIONAL AND PUBLIC IMPORTANT SUFFICIENT TO WARRANT REVIEW ON APPEAL.

Respondent claims that the issues presented by Petitioner in her Petition for Wit of Certiorari have no national significance or public importance. This is an improper characterization of issues that concern and effect many people in this nation. Every employee will be interested in the dynamics of how certain types of employment are classified. Depending upon the outcome of this case, employers could have considerable deference on how to terminate an employee's employment. In addition, Petitioner asserts that her employment was terminated due to retaliatory measures on the part of Respondent after Petitioner filed a grievance with the appropriate

State Commission. Again, the consequences of this case can affect how or whether an employee will dare to utilize his or her rights by seeking such recourse if an employer can so discharge with impunity.

Petitioner also claims that Respondent discriminated against her based upon her age, religion, and national origin. Obviously, these factors are not unique to Petitioner. Several other people in this country who have one or more of these traits personal to them will be greatly interested in the outcome of this matter. Petitioner asserts action pursuant to Federal law, such as the Elliott-Larsen Civil Rights Act and Title VII of Civil Right Act. This Court has, in the past, reviewed cases concerning this subject matter. General Tel Co of the Northwest Inc v EEOC, 446 US 318; 100

SCt 1698; 64 L Ed 2d 319 (1980), US Postal Service Bd Governors v Aikens, 460 US 711; 103 SCt 1478; 75 L Ed 2d 403 (1983).

Contrary to Respondent's assertions, this case is not limited to a mere dispute concerning an Appellate Court's misreading of the facts. Wrongful discharge, retaliatory, discharge, and discriminatory discharge based on age, religion, and national origin are serious matters with implications reaching far beyond this case alone to the very fabric of society in this nation. For these reasons, Petitioner's Petition for Writ of Certiorari should be granted.

II. THIS IS AN APPROPRIATE CASE FOR THE EXERCISE OF THE COURT'S POWERS OF SUPERVISION AND DISCRETIONARY REVIEW.

Respondent claims that the issues raised by Petitioner do not have any legal significance or public importance. In doing so, Respondent cites Rule 10 of the Rules of the Supreme Court of the United States, Rule 10(1)(a) permits this Court's discretion in matters where a Circuit Court of Appeals has "so far departed from the accepted and usual course of judicial proceedings...so as to call for an exercise of this Court's power of discretion". Petitioner's case falls within the ambit of this provision. The Sixth Circuit Court of Appeals was derelict in affirming the court's grant of summary judgment where there was a clear and genuine issue of material fact, such that it was a question for the jury to

determine. This Court has maintained, in past decision, the importance and significance of the jury's role in the fair administration of justice, Baker v Texas & Pacific Railway Co, 359 US 227; 79 SCt 664; 3L Ed 2d 756 (1959), Gallick v B & O Railroad Co, 372 US 108; 83 SCt 659; 9 L Ed 2d 618 (1963). In Gallick, this Court referred to the Court's decision in Tennant v Peoria & Pekin Union Railroad Co, 321 US 29; 64 SCt 409; 88 L Ed 520 (1944) by stating that the Court had granted the writ of certiorari, "because of important problems as to Petitioner's right to a jury determination of the issue of causation". Gallick at 114. The Court in Gallick went further to state, "It is the jury, not the court, which is the fact-finding body". Gallick at 115. The Court relied on language from Washington & Georgetown R Co v McDade, 135

US 554; 10 SCt 1044; 341 Ed 235 (1890), which declared, "The very essence of [the jury's] function is to select from among conflicting inferences and conclusions that which it considers most reasonable". Washington at 571, 572. Furthermore, "That conclusion whether it relates to negligence, causation or any other factual matter, cannot be ignored." Tennant at 35.

Respondent cites past precedent to demonstrate the standards required for this Court to grant review for summary judgment cases. Eastman Kodak Co v Image Technical Services, Inc. ___US___, 112 SCt 2072; 119 L Ed 2d 265 (1992). However, respondent failed to mention the Court's holding in that case which stated "On appeal of grant of summary judgment, non-movant's evidence is to be believed, and all justifiable inferences are to be

drawn in its favor." Eastman Kodak at 2077. This holding clearly indicates that the non-movant, Petitioner, is entitled to a considerable quantum of defence in her favor.

Examining the Court's previous holdings, it is clearly evident that Petitioner's case comes within the scope of the Court's discretionary power to grant certiorari, pursuant to Rule 10 of the Rules of the United States Supreme Court. The Appellate Court's grant of summary judgment, on the issue of the form of employment, as well as the issue of discharge based on discrimination, was premature at best. For these reasons, Petitioner's Writ of Certiorari should be granted.

CONCLUSION

The Petitioner has presented ample and sufficient reasons to warrant review of this case. Petitioner has asserted legal issues that are both significant and important not only to the outcome of this case, but also for the interest of the public as a whole. In addition, Petitioner has presented sufficient legal issues to demonstrate that the Sixth Circuit Court of Appeals indeed erred in affirming the trial court's grant of respondent's motion for summary judgment. For all of the foregoing reasons, Petitioner respectfully requests that the Petition for Writ of Certiorari be granted.

Therefore, the matter is one for the jury to decide, i.e., a question of fact; and the Petitioner, Samirat Hafiz,

respectfully requests that the Petition for Writ of Certiorari be granted.

Respectfully submitted,

Samirat Hafiz

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